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THE HON. JOHN C. COUGHENOUR

9 UNITED STATES DISTRICT COURT

10 WESTERN DISTRICT OF WASHINGTON, SEATTLE

11 **JAMES S. GORDON, Jr., a married**
12 **individual, d/b/a**
13 **'GORDONWORKS.COM',**

14 v.
15 Plaintiff,

16 **VIRTUMUNDO, INC, a Delaware**
17 **corporation, d/b/a**
18 **ADNOWLEDGEMAIL.COM;**
19 **ADKNOWLEDGE, INC., a Delaware**
20 **corporation, d/b/a**
21 **ADKNOWLEDGEMAIL.COM;**
22 **SCOTT LYNN, an individual; and**
23 **JOHN DOES, I-X,**

24 **Defendants.**

25 James S. Gordon, Jr. declares as follows:

- 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age
2) of 18 and am otherwise competent to testify.
- 2) I deny and refute in the strongest terms possible Defendants' statement that I have
3) somehow intentionally solicited commercial emails from Defendants or anyone else. In

4) DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT
5) OF PLAINTIFF'S RESPONSE TO MOTION TO
6) DISMISS GORDON v. VIRTUMUNDO GROUP, INC.

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7) **MERKLE SIEGEL & FRIEDRICHSEN**
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fact, the receipt of voluminous amounts of such unwanted "spam" has caused both me personally, and my interactive computer businesses untold hardship and expense in the way of: huge amounts of time and effort expended to filter, report on, and attempt to stop through steps outlined below and the resulting loss of time away from remunerative work; loss of time away from work and studies to assist in this enforcement action; loss of bandwidth, and connectivity; loss of good will, and other injury and damages, more difficult to quantify.

- 3) It is my goal to reclaim my domain, "gordonworks.com" from spammers of all stripes. Eventually, I'd like to see all of my clients' domains spam-free. I hope that through helping to enforce the very needed anti-spam statutes, through actions such as this, that I can assist in that effort for myself and others.
- 4) I have personally, and on behalf of Omni Innovations, LLC sent approximately 322,601 cease-and-desist email notices to spammers who have sent me unwanted commercial email. Copies of those notices are included as part of my First Supplemental Responses to Defendants' discovery requests.
- 5) I have sent approximately 2,900 direct email requests to Virtumundo to cease and desist and to stop transmission of all email to me. (See example request at **Exhibit "A"** – **Dear...Marketer letter/contract**). I sent those requests to: abuse@virtumundo.com, legal@virtumundo.com, postmaster@virtumundo.com, webmaster@virtumundo.com. However, the majority of the cease and desist emails were sent to email addresses at the following domains which are owned by defendants, vm-mail.com, vmadmin.com, adknowledgemail.com, vmlocal.com (shut down), adknow-net.com, and vttarget.com. Copies of those notices are included as part of my First Supplemental Responses to Defendants' discovery requests.
- 6) Plaintiffs have now received in excess of 17,000 spam emails from Defendants, or sent on their behalf. This number is considerably more than the approximately 11,000 I stated in my first declaration because at the time I had not had the necessary tools, nor the opportunity to do a complete and thorough search of Plaintiffs' internet server, which I have now done. However, due to the voluminous number of spams received from, or on

behalf of Defendants, a precise number is difficult to ascertain even now, and further emails attributable to Defendants may be discovered, or some may turn out to be duplicates, or un-attributable conclusively.

7) As part of the spam emails described above, I was deceived by deceptive emails received from, or on behalf of Defendants, which represented to me that I had won free prizes.

Exhibit “B” and Exhibit “C” [B = “You Have Already won email”] [C = email confirmation from Virtumundo – dated 9/4/03]. I believe that these emails and others like them violate RCW 19.170 et seq., which requires such promotional offers to comply with strict requirements, some of which the emails from Defendants do not.

8) Attached as **Exhibit "D"** is a copy of the legend which was provided to Defendants as part of Plaintiffs' First Supplemental Responses to their first discovery requests. This legend explains how the email analysis was conducted and the benchmarks used by me to make that analysis. I have also included a cover sheet for the DVD, which outlines the contents for the DVD as to the discovery included on it. - **Exhibit "E"**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

James S. Gordon, Jr.
9804 Buckingham Drive
Pasco, WA 99301
509-210-1069

EXECUTED this 11th day of September, 2006

James S. Gordon, Jr.

DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT
OF PLAINTIFF'S RESPONSE TO MOTION TO
DISMISS GORDON v. VIRTUMUNDO GROUP, INC.

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Certificate of Service

I, hereby, certify that on September 11, 2006, I filed this affidavit with this Court via approved electronic filing, and served the following:

Attorneys for Defendants: Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey,
Third Party Defendants: Jamila Gordon, Bonnie Gordon, James Gordon III, Jonathan Gordon,
Emily Abbey, and Robert Pritchett by other means.

/s/ Adana Lloyd
Adana Lloyd

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